REMARKS

Prior to this amendment, claims 1-33 were pending. In this amendment, applicant has amended claims 1, 15 and 31 and cancelled claims 7, 12, 21 and 26. Accordingly, claims 1-6, 8-11, 13-20, 22-25 and 27-33 are currently pending.

Applicant wishs to thank Examiner Tran for the courtesy of a personal interview with the undersigned, the inventor Carl J. Pacifico, and the assignee's representative Paul H. Richardson, held at the United States Patent and Trademark Office on January 28, 2005. During the interview, the art rejections raised in the Office Action dated August 10, 2004 were discussed. The discussion below contains a summary of the interview.

In the Office Action, claims 1-33 were rejected under 35 U.S.C. §112, first paragraph allegedly for lack of enablement. The examiner contends that the specification does not disclose how the ingredient is made to be microporous. The examiner states on page 2 of the Office Action the following:

> On page 4 of the specification, applicant discloses "spray chilling as a coating method has been considered inadequate since the coating resulting therefrom is not substantially continuous and non-porous". On page 6 of the specification, applicant discloses "the microporous lipid coating is formed by spray chilling techniques." The specification does not disclose how the ingredient is made to be microporous; spray chilling is disclosed to give a non-porous coating and the claimed ingredient is made by spray chilling techniques; yet, applicant claims that the coating is microporous. There is no teaching of how the ingredient is made to be microporous.

Therefore, the examiner asserts that the claimed invention is not enabled.

Applicant respectfully disagree. The above statements by the examiner that the specification discloses that spray chilling technique results in a non-porous coating is not supported by the specification.

For example, paragraph [0011] of the specification discloses that "spray chilling as a coating method has been considered inadequate since the coating resulting therefrom is not substantially continuous and non-porous." Thus, the specification clearly states that a spray chilled coating is **not** substantially continuous **and** non-porous. The specification is therefore stating that a spray chilled coating is not substantially continuous and **also not** substantially non-porous. This meaning is clear in the context of the sentence as the specification is stating why a spray chilling coating was considered inadequate.

Further, paragraph [0023] of the specification describes how the microporous lipid coating is formed by spray chilling, and states as follows:

> ...In the spray-spraying techniques of the present invention, the particle to be coated is mixed with the coating to form a colloidal suspension. When lipids are utilized as a coating material, heat is applied to the mixture along with a continuous agitation to prevent solidification of the lipid. The mixture is then pumped with pressure through a single nozzle into a closed chamber. The mixture is substantially atomized into a substrate/lipid combination mainly due to the high pressure combined with the small size of the nozzle. As the atomized combination is propelled into the chamber, a spherical particle will be formed. In the present invention, the atomized combination is propelled in a substantially upward projection. The atomized combination may also be propelled horizontally into the chamber.

Therefore, it is clear from, *inter alia*, the above disclosures of the specification that spray chilling technique gives the claimed microporous lipid coating. Accordingly, applicant respectfully request that the rejection of claims 1-33 under 35 U.S.C. §112, first paragraph be reconsidered and withdrawn.

Claim 1 was rejected under 35 U.S.C. §112, second paragraph for allegedly being indefinite. The examiner contends that the terms "reticulated passages" is indefinite.

Applicant disagree that the words "reticulated passages" is indefinite. Merely to expedite prosecution, applicant has deleted the words from claim 1. Accordingly, the rejection of claim 1 under 35 U.S.C. §112 is now moot and should be withdrawn.

Applicant wish to emphasize that the above amendment to claim 1 is not to be construed as an admission by applicant of the examiner's allegation that claim 1 is indefinite. Rather, the amendment has been made merely in order to expedite prosecution.

Claims 1-11, 13-25, 27-28, 31 and 33 were rejected under 35 U.S.C. §102(b) for allegedly being anticipated by Katz et al. (U.S. Patent No. 4,792,456). According to the examiner, Katz et al. disclose coating leavening agents with hydrogenated vegetable oil. The examiner contends the composition of Katz et al. would possess the same property as the claimed invention since Katz et al. utilizes the same coating material as the claimed invention.

Applicant respectfully disagree. During the personal interview, applicants pointed out to the examiner that the Durkote® encapsulates disclosed in Katz et al. do not have a microporous lipid coating, as is required in the claimed invention. Applicant explained to the examiner that the microporous coating is made by spray chilling techniques.

It was also explained to the examiner that the Durkote® encapsulates disclosed in Katz et al. are not made by spray chilling. Rather, the Durkote® encapsulates disclosed in Katz et al. is made by fluidized bed technique. Applicant proposed to amend the claims to better define the microporous coating. See Interview Summary sheet.

To support applicant's position that the Durkote® encapsulates disclosed in Katz et al. are, in fact, made by fluidized bed technique, evidence was previously submitted. This evidence was submitted along with the application papers and Preliminary Amendment filed on November 14, 2003. However, in the Office Action dated August 10, 2004, the examiner was silent with respect to the Pacifico Rule 132 Declaration and accompanying U.S. Patent Nos. 4,497,845 and 4,511,584.

U.S. Patent Nos. 4,497,845 and 4,511,584 are documented references which outlines the Durkote® technology and refers to the technology as using fluidized bed. For instance, Example 6 of U.S. Patent No. 4,511,584 refers to a Durkote® encapsulated lactic acid prepared by the procedure of Example 1. Example 1 of the `584 patent further refers to the conditions and procedures of Table 1, which discloses conditions and procedure for fluid bed technique (see column 5, lines 3-33 of the `584 patent).

Accordingly, it is clear from the `584 patent that the Durkote® technology for encapsulation utilizes fluidized bed technology.

The examiner is invited to review the Rule 132 Declaration of Carl J. Pacifico, the disclosures of U.S. Patent Nos. 4,497,845 and 4,511,584, and the arguments presented in the Preliminary Amendment dated November 14, 2003 at this time.

Therefore, applicant has provided evidence that the coatings of the claimed invention is different than that of Katz et al. Specifically, the coating of the Durkote® product disclosed in Katz et al. are made by fluidized bed, and are thus continuous and non-porous. In stark contrast, the coating of the claimed invention is made by spray chilling, and is thus **not** substantially continuous and **not** substantially non-porous.

Applicant has amended claims 1 and 15 claims by defining the microporous coating with respect to the way the coating is made. Specifically, the claims have been amended to include that the chemical leavening agent is encapsulated by spray chilling.

Further, Katz et al. discloses that a maximum of two percent of the Durkote® encapsulates are retained on 10 mesh and a maximum of 10% passes through 140 mesh. It is well known to those skilled in the art that 140 mesh is about 140 microns, and that 10 mesh is about 2000 microns. It is also well known to those in the art that fluidized bed technology generally do not provide encapsulates which are less than about 100 microns.

In contrast to Katz et al., the claimed ingredient is encapsulated by spray chilling and has an average particle size of about 50 microns to about 100 microns.

Applicant has demonstrated the superior results obtained with chemical leavening agents encapsulated by spray chilling with a microporous lipid coating as is required in the claimed invention, compared to chemical leavening agents encapsulated with a continuous lipid coating by fluidized bed techniques. See Table 1 and Example 2 of the specification. There, it is demonstrated that a 50% sodium bicarbonate with a microporous coating provided good release in baking. In contrast, a 50% sodium bicarbonate with a continuous coating provided a product that is not fully released in baking and brown spots on the biscuit.

Accordingly, in view of the above, applicant respectfully request that the rejection of 1-11, 13-25, 27-28, 31 and 33 under 35 U.S.C. §102(b) over Katz et al. be reconsidered and withdrawn.

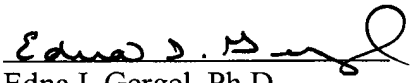
Claims 12, 26 and 29-30 were rejected under 35 U.S.C. §103(a) for allegedly being obvious over Katz et al. For the same reasons Katz et al. fails as a §102 reference, it also fails as a reference under §103. Specifically, there is no disclosure or suggestion of (1) a chemical leavening agent encapsulated with a microporous lipid coating by spray chilling technology and (2) the particle size of about 100 microns to about 50 microns. Thus, Katz et al. does not disclose or suggest each and every element of the claims.

As discussed above, superior results are obtained with the claimed invention as compared to chemical leavening agents encapsulated with a continuous lipid coating by fluidized bed techniques.

Accordingly, the claimed invention cannot be said to be obvious over Katz et al. Therefore, applicant respectfully requests that the rejection of claims 12, 26 and 29-30 under 35 U.S.C. §103(a) over Katz et al. be reconsidered and withdrawn.

For the above reasons, the presently claimed subject matter is niether anticipated nor obvious over Katz et al. Accordingly, allowance of the pending claims is earnestly requested. If the examiner has any questions regarding this amendment, the examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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